IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 29391 of 2006(Y)

AGAINST THE ORDER DATED 26/10/2006 IN IA.3451/2006 IN OS.368/1999 of MUNSIFF COURT,CHAVAKKAD

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PETITIONER:

VATANAPPALLY GRAMA PANCHAYAT,
VATANAPPALLY, THRISSUR, REPRESENTED BY ITS SECRETARY, P.M.RADHAKRISHNAN, AGED 53 YEARS, S/O.MUTHAYYA, DEEPAM VEETTIL, PALARIVATTOM, EDAPPALLY, ERNAKULAM DISTRICT.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:

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1. SULOCHANA,
W/O.CHELAPARAMBIL NARAYANAN,
THRITHALLUR DESOM, VATANAPPALLY VILLAGE,
CHAVAKKAD TALUK.

2. VILASINI, W/O.CHELAPARAMBIL VALSALAN,
THRITHALLUR DESOM, VATANAPPALLY VILLAGE,
CHAVAKKAD TALUK.

BY //

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF APPLICATION FILED BY PETITIONER ALONG WITH WRITTEN STATEMENT IN OS 368/99 OF MUNSIFF COURT, CHAVAKKAD

EXT.P2: COPY OF ORDER DT.26/10/2006 IN IA 3451/06 IN OS 368/99 OF MUNSIFF COURT, CHAVAKKAD

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.29391 OF 2006

Dated 15th December 2006

JUDGMENT

Petitioner is fifth defendant in O.S.368/99 on the file of Munsiff court, Chavakkad. Respondents are plaintiffs. Petitioner was impleaded as fifth defendant as per order in I.A.455/01 dated 7/2/2001. But no written statement was filed. Subsequently when suit was included in the special list, petitioner filed I.A.3451/06 an application to receive the written statement contending that original counsel did not file written statement and the counsel was changed but non filing of written statement was not known to the petitioner and there are two other connected suits when written statements were filed and on finding out the non filing of written statement, application was filed to receive written statement. Under Ext.P2 order learned Munsiff dismissed the application holding that at the belated stage it cannot be received.

2. This petition is filed under Article 227

of Constitution of India challenging Ext.P2 order. Though notice was served on respondents/plaintiffs they did not appear either personally or through a counsel. Learned counsel appearing for petitioner was heard.

3. Case of petitioner panchayat is that panchayat has originally engaged a counsel who was prosecuting the case and along with two other suits were written statements were filed and non filing of written statement in this suit was not brought to the notice of panchayat and subsequently the counsel was changed and after noticing that written statement was not filed, I.A.3451/06 was filed to receive the written statement and in the circumstance of the case learned Munsiff should have received the written statement. Considering the contentions raised by petitioner, learned Munsiff should have allowed the application to receive the written statement. Hence in the particular circumstance of the case, Ext.P2 order is quashed. I.A.3451/06 stands allowed. Learned Munsiff is directed to receive the written statement of the fifth defendant.

Writ petition is allowed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.